

UNTANGLING

Legal Issues that Affect Teachers and Student Teachers

BY CHRISTINA BAIN

I came in the classroom and was shocked by what I saw. Two middle school boys were running around sword fighting with exacto knives as the student teacher and cooperating teacher stood and watched! When I asked what in the world was going on, the student teacher meekly said she couldn't get the class under control. I took those two boys out of that classroom and read them the riot act about their behavior! When they asked who I was, I told them I was their worst nightmare waiting to happen because I could get them into so much trouble, so fast, it would make their head spin.

(personal communication from a university supervisor, May 4, 2003)

This actual scenario occurred in a large suburban junior high school in Texas. After witnessing the incident, the university supervisor had a long discussion with both the student teacher and the mentor teacher about responsibility and safety issues in the art room. Luckily, on future visitations the supervisor noted a dramatic improvement in classroom management. However, had an accident occurred during the dueling exacto knife incident, who would have been held liable in the eyes of the law? The district? The university? The student teacher? The mentor teacher? The answer varies widely depending upon state law, district policies, and the agreements made between universities and school districts prior to entering into student teaching partnerships (Mounts, 1998). While many art teachers rely upon common sense while performing their job duties, ignorance

of the law does not mean exemption from possible penalties. The purpose of this article is to raise awareness about important legal issues focusing on child abuse, safety in the art room, freedom of expression and religion, and special education that could affect both art teachers and their student teachers.

Historical Legal Antecedents of Education

First, let's examine some of the historical underpinnings of educational law in America. The United States Constitution, written over 200 years ago, is the legal foundation for our country. While the Constitution itself provides support for the idea of public education in the United States, the Constitution clearly does not stipulate a federally funded or regulated public school system (Johnson, Dupouis, Musial, Hall, &

Gollnick, 1999). This can be somewhat confusing because federal law provides overarching guidelines regarding education, but these laws are then interpreted and regulated at the state level.¹ One such example is the federally mandated Americans with Disabilities Act of 1990 (1991) that set stronger specifications for educating children with special needs in public schools. In response, it falls to each individual state, and in some instances it is determined at the district level, to set the specific criteria that comprises a free and appropriate public education for children.

Clearly, educational legislation and how it is interpreted varies from state to state.² Despite these differences, however, there are three Constitutional Amendments that hold paramount significance for educational law in the United States. These are the Tenth, First, and Fourteenth Amendments.

Courts interpret the Tenth Amendment as granting the power to regulate education to the individual states. It declares that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. Hence, every state has provided for education in its constitution or basic statutory law. It is important to note, however, that district policies can also impact how laws are interpreted at the state level as well. For example, the Louisiana State Appeals Court ruled against Edward Blanchet (1969) when he refused to adhere to district policy regarding professional attire, or more specifically, for refusing to wear a necktie at work.

The First Amendment guarantees freedom of speech, of religion, and of the press, as well as the right to petition. It proclaims that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances. In contrast to the aforementioned Blanchet case, if district policies are incongruent with existing state or federal regulations, such as when The American Center for Law and Justice, an international public interest law firm, challenged the Oregon School District regarding discrimi-

nation against a Student Bible Club, state or federal laws generally prevail over district policies (Business Wire, Inc., 2004). In this particular case, religiously based student groups must be provided with the same rights as other student groups.

The Fourteenth Amendment protects certain privileges of its citizens. It claims that no state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Equal educational opportunity, which is particularly significant in the area of children with special needs, will be discussed more fully in a following section. How states determine what comprises equal educational opportunity, however, can be decided at the district level (Omaha World-Herald, November 18, 2004). That, in turn, is often driven by financial constraints. Don Cunningham, superintendent of Madison Public Schools in Omaha, Nebraska voiced concerns pertaining to inequities of education that may result due to disparities in school funding (Omaha World-Herald, November 18, 2004). And so, state officials in Nebraska are concerned that since city schools have a larger slice of the revenue pie, students in urban areas could graduate with a more comprehensive education than rural students.

While there are dozens of other state and federal laws impacting a wide range of educationally related topics, the Constitution and the Tenth, First, and Fourteenth Amendments are significant because they provide the cornerstone for educational legislation.

Child Abuse

The idea of protection espoused under the Fourteenth Amendment is further supported via child abuse legislation. Teachers, in nearly every state, are required by law to report suspected child abuse. According to the National Committee for the Prevention of Child Abuse, abuse is defined as a nonaccidental injury or pattern of injuries to a child for which there is no "reasonable" explanation. The National Child Abuse Prevention and Treatment Act, established by Congress (1974), defines child abuse and neglect as:

Physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen or the age specified by the child protection law of the state in question, by a person who is responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby. (p. 23)

Despite this definition, child abuse is not a federal crime; in the eyes of the law it is a state crime. Although state definitions regarding child abuse and related laws vary, all states generally pay close attention to the following elements: (1) physical injury, (2) mental or emotional injury, and (3) sexual molestation or exploitation.

No state requires absolute certainty prior to reporting suspected child abuse. Because abuse rarely occurs in public, "reasonable cause" is sufficient in order to file a report. Every state provides immunity from civil and criminal prosecution that could occur as a result from reporting suspected child abuse. However, in most states (with the exception of Idaho, Illinois, Mississippi, Montana, and Wyoming) educators can be held liable if they suspect abuse but do not report it to authorities. In most states, failure to report child abuse is a misdemeanor and the penalty could range from time up to a year in jail and/or a fine of up to \$1,000 (Fischer, Schimmel, & Stelman, 2003).

Art teachers, due to the expressive nature of many of their projects, sketchbooks, and journaling assignments, often have a unique window to view possible signs and symptoms of abuse.³ Following the Columbine tragedy, art teacher Barbara Hirokawa Gal concurred that her students dealt with many difficult issues through their artworks, such as abusive relationships and family struggles (personal communication, October 19, 2004). If you suspect that a student's artwork or writing reflects possible abuse, it is important that you speak with the student and give him or her an opportunity to explain the meaning behind their work. If you still have concerns after the dialogue, then it is appropriate to document your conversation and contact your school counselor and/or administrator for further direction.

Safety in the Art Room

Also under the Fourteenth Amendment, children have a right to a safe school environment. Art teachers are well aware that they work with equipment that can cause injuries if not handled properly. Even so, art teachers can be held liable for injuries if found negligent of not demonstrating proper care and handling of materials and tools to their students. District policies could also affect art teachers' choice of equipment and materials. For example, many districts have current policies forbidding weapons of any kind from school grounds. Exacto knives and utility blades, commonly used in secondary art classrooms for matting and other purposes, may not be permissible, as some districts may classify these tools as weapons. Other districts may allow only art teachers themselves to utilize these tools, or they may allow art teachers to use them with students only under close supervision.

Art teachers should not assume that other supposedly "safe" art materials (those without cautionary labels) are harmless either. Some students could have severe allergies or asthmatic reactions to anything from clay dust to paint fumes. Chelsea Allison (2003), an Assistant Principal in Fort Worth, Texas ISD, recommends sending out a parental permission form that clarifies exactly what projects and materials students will be working with at the beginning of each marking period. As well as gathering important contact information, the form asks parents to list any known allergies or possible limitations for each student. Knowing this type of information early in the year is helpful, as art teachers consider how to make modifications for students.

There are two federal laws that specifically pertain to safety issues in the art room. Public Law 105-17 stipulates a least restrictive environment for students. This means that art teachers cannot discriminate against students due to their ability level or disabilities. Reasonable modifications must be made so that each child can participate in classroom art activities. Therefore, if a material presents challenges to a student, the art teacher must be able to offer that student an alternate media or simplified project. A second federal law, Public Law 100-695, is known as the Labeling of Hazardous Art Materials Act (LHAMA). By law, any hazardous art

materials must be clearly labeled by the manufacturer. For example, many art materials, such as paints and glues, carry an AP (approved product), CP (non-toxic seal), or CL (cautionary labeling seal) identifying the risk level of the material.

The federal government established OSHA, the Occupational Safety and Health Administration to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health (Occupational Safety & Health Administration, 2004). Once again, however, individual states are in charge of establishing and regulating their own laws pertaining to hazardous materials in schools and workplaces. Although teachers should lock up potentially hazardous materials such as turpentine and knife blades, many states have additional safety requirements. In Texas, the Hazardous Communication Act (1989) lists 10 points pertaining to hazardous materials that employers and employees must follow. For example, readable labels must exist on containers of hazardous materials, employees must be provided with appropriate personal protective equipment (such as safety goggles or rubber gloves), and MSDS (Material Safety Data Sheets) must be readily available in designated areas.

Special Education/Disabilities

The Fourteenth Amendment, interpreted as focusing on issues pertaining to equal opportunity, has also served as a cornerstone for special education legislation. In the past quarter century, state and federal courts have passed important legislation regarding educating children with special needs (Li & Altman, 1997). In 1975, Congress passed the Education for All Handicapped Children Act (Public Law 94-142). In order to receive federal funds, states were required to provide a free appropriate public education (FAPE) to all children with disabilities between the ages of 3 and 21. Children with exceptional needs could not be excluded from public education due to their disabilities. This law was specific in describing the kind and quality of education each child with a disability was to receive and it clarified that each child must have an Individualized Education Plan (IEP) written by general and special education teachers, and subject to parents' approval.

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In 1990, the EHA became known as IDEA (Individuals with Disabilities Education Act). To strengthen and improve this legislation, IDEA was amended in 1997 and the new provisions can be summarized as:

place the emphasis on what is best educationally for children with disabilities rather than on paperwork for paperwork's sake; (2) give professionals, especially teachers, more influence and flexibility and school administrators and policymakers lower costs in the delivery of education to children with disabilities; (3) enhance the input of parents of children with disabilities in the decision making that affects their child's education; (4) make schools safer; and (5) consolidate and target discretionary programs to strengthen the capacity of America's schools to effectively serve children, including infants and toddlers, with disabilities. (Jeffords, report from the Committee on Labor and Human Resources, to accompany S. 717)

State law also mandates that children with special needs be placed in the Least Restrictive Environment (LRE) to support their education, which of course, can vary depending on each child's individual abilities. In many schools, children with special needs are mainstreamed into art classes. In these instances, art teachers should receive a copy of the student's IEP as they are responsible for making reasonable accommodations to best suit the needs of the child. This could range from making sure that the child has additional time, space, or alternate art materials necessary to complete an art lesson. Research demonstrates that preservice students often feel unprepared to teach art in a mainstreamed classroom (Allison, 2008; Guay, 1994). Therefore, it is recommended that art teachers be proactive by collaborating with the child's teachers, counselor, special education instructors, and parents in order to learn how to differentiate instruction for each child's individual needs (Ponder and Kissinger, 2009). Furthermore, Causton-Thoeharis and Burdick (2008) emphasize the importance of developing strong working relationships with paraprofessionals in the inclusive art classroom.

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Freedom of Expression

If the First Amendment guarantees us freedom of expression, then our students can draw or create anything they want in our class, right? No. Although it is legal for our students to create any type of imagery on their own time outside of school, what constitutes appropriate imagery during school hours is largely determined by district policy. Again, how districts define what constitutes "inappropriate" imagery varies, but generally visuals associated with gangs, drugs, nudity, and weapons, are often prohibited for school projects. Many art educators, however, challenge us to carefully consider censorship issues through the inclusion of contemporary visual culture images in art curriculum (Darts, 2008; Hallquist, 2008; Sweeny, 2007). Likewise, Hoeptner Poling and Suominen Guyas (2008) offer strategies for handling nudity in the art room. When in doubt, ask your administrator for clarification on district policies.

Ultimately, it is the art teacher's responsibility to make sure that any student artwork that will be displayed publicly or entered into contests contain imagery that is considered appropriate for that venue. Thumbnail sketches and periodically checking student progress are both effective ways to avoid surprises. I recall a story that a colleague

shared with me about a local principal who proudly displayed a prizewinning abstract student painting in his office. Much to his embarrassment, after several months someone asked him, "Are you aware that you have a big colorful picture of marijuana over your desk?" (personal communication, November 18, 2000).

Freedom of Religion

In addition to freedom of speech, the First Amendment also guarantees freedom of religion. How should art teachers tackle this subject in their classroom? Historically, religion has played a significant role in education since the founding of our country. During the colonial era, private religious schools were the main sources of education (Efland, 1990). Even today, many private schools operate under religious sponsorship. However, court cases related to the separation of church and state limits the role of religion in public schools. For example, teachers do not have the right to preach their religious beliefs in school. In New York, an art teacher was dismissed because she recruited students for her religious organization. Because she refused to stop discussing her beliefs in school, it was ruled that her actions were not protected (*LaRocca vs. Board of Education of Rye City School District*, 1978).

While most art teachers are aware that they should not preach their personal religious beliefs during school time, many are concerned that providing the necessary religious backgrounds of various artworks might offend students or violate their rights. There is a big difference, however, between providing pertinent religious contextual information and proselytizing. In many instances it would be nearly impossible to teach about a particular artist, culture, or art movement without discussing the predominant social issues, including religion, of the time. Barrett, Blackson, Daiello, and Goffos (2006) provide excellent practical suggestions concerning how to have classroom conversations rooted in spirituality or religion.

Liability and Student Teachers

Since the law clearly protects the rights and safety of both students as well as teachers, what rights do student teachers have? My initial research suggests that this is somewhat of a gray area, but again, it is largely regulated by each state that in turn often rules according to individual district policies. Many states do not have specific laws written pertaining to student teachers; it is generally assumed that student teachers bear the same rights as well as responsibilities of a full-time teacher (Hartmeister, 1995).

Therefore, liability is something that student teachers should remain critically aware of during their apprenticeship. Returning to the exacto knife scenario at the beginning of this article, if one of the middle school students accidentally cut another student, are there different liability standards for student teachers? Are they exempt from liability since the district doesn't employ them? According to Fischer, Schimmel, and Stellman (2003) "student teachers are held to the same duties of care as full-time teachers and would be liable for foreseeable injuries that are caused by their negligent acts" (p. 64). Therefore, in this situation, most courts

would likely rule that the student teacher was liable for the accident due to negligence: She saw the students mishandling the equipment and did not attempt to stop the situation (Hazard, 1976). On the other hand, a student teacher would not be held liable for injuries or accidents resulting from unforeseeable student behavior. For example, when a 6th-grade student in New York hurt himself because a classmate pulled out his chair from beneath him as he sat down, the courts ruled that this accident could not have been anticipated or prevented (*Crews v. Cloncs*, 1970).

In order to protect student teachers, some universities require that students purchase liability insurance before stepping foot in a classroom. Other universities, however, operate under the assumption that the districts will "cover" the student teachers if an accident occurs. After making several inquiries among local districts, however, I've found that many districts will only partially cover student teachers' legal fees and defense. There are many affordable and reputable sources for liability insurance, including the National Art Education Association, state and local teacher associations, and the National Education Association.⁴

A Final Word

The number of lawsuits pertaining to educationally related issues is on the rise in our country (Mounts, 1999). Garner (2000) reports that teachers consider legal issues the third most important area of teacher preparation. However, few universities offer undergraduate courses in educational law and few programs offer comprehensive training concerning the types of legal issues that new teachers are expected to know. In closing, I would like to emphasize that I am not a lawyer. I am an art educator who is interested in how the law affects art educators and their careers. While there are many other significant issues in educational law, I chose to focus on several topics that I felt were most critical for art teachers and their student teachers. It is my hope that the information provided in this article helps to untangle pertinent legal issues for current and future art teachers.

Christina Bain is Associate Professor of Art Education at the University of North Texas, Denton. E-mail: bain@unt.edu

Table 1: Legal Resources for Teachers

1. Your University or School District

The closest place to start, if you are currently teaching at a university or public/private school, is to check with your human resources department. Find out if your institution/district has a legal department, or if someone on staff can answer legal questions. Teachers in some states, such as New York, are members of unions and can direct legal questions to their union representatives.

2. State Department of Education

Each state department of education has a legal department that provides resources pertaining to educational law. Consider e-mailing specific questions to the appropriate agency. Although it often takes several days for a reply, I've found state departments to be very helpful. For a complete list of state departments of education and their contact information, see the AllEducationSchools website at <http://www.alleducationschools.com/faqs/statedepartment>

3. National Education Association

1201 16th Street, NW
Washington, DC 20036
(202) 833-4000
<http://www.nea.org/>

National organization with state and local chapters, members include elementary and secondary teachers and administrators. Publishes *NEA Today*.

4. American Federation of Teachers

555 New Jersey Avenue, NW
Washington, DC 20001
(202) 879-4400
<http://www.aft.org/>

5. National School Boards Association

1680 Duke Street
Alexandria, VA 22314
(703) 838-6722
<http://www.nsba.org/>
National clearinghouse for information relating to a variety of educational and legal issues pertaining to public schools.

6. Education Law Association

300 College Park
Dayton, OH 45469
<http://educationlaw.org/>
Organization that exchanges information on school law between lawyers, school board members, and others. Publishes a monthly newsletter and an annual update.

Table 2: Physical and Behavioral Indicators of Child Abuse and Neglect

Type of Child Abuse/Neglect	Physical Indicators	Behavioral Indicators
Physical Abuse	Unexplained bruises and welts: <ul style="list-style-type: none"> • on face, lips, mouth • on torso, back, buttocks, thighs • in various stages of healing • clustered, forming • reflecting shape of article used to inflict (cord, belt buckle) • on several different surface areas • regularly appearing after absence, weekend, or vacation 	<ul style="list-style-type: none"> • Wary of adult contacts • Apprehensive when other children cry • Behavioral extremes: aggressiveness or withdrawal • Frightened of parents • Afraid to go home • Reporting injury by parents
	Unexplained burns: <ul style="list-style-type: none"> • cigar, cigarette burns, especially on soles, palms, back, or buttock • immersion burns (socklike, glove-like, doughnut-shaped on buttock or genitalia) • patterned like electric burner, iron, etc. • rope burns on arms, legs, neck, or torso 	
	Unexplained fractures: <ul style="list-style-type: none"> • to skull, nose, facial structure • in various stages of healing • multiple or spiral fractures 	
	Unexplained lacerations or abrasions: <ul style="list-style-type: none"> • to mouth, lips, gums, eyes • to external genitalia 	
Physical Neglect	<ul style="list-style-type: none"> • Consistent hunger, poor hygiene, inappropriate dress • Consistent lack of supervision, especially in dangerous activities or long periods • Unattended physical problems or medical needs • Abandonment 	<ul style="list-style-type: none"> • Begging, stealing food • Extended stays at school (early arrival, stays late) • Constant fatigue, falling asleep in class, listlessness • Alcohol or drug abuse • Delinquency (i.e.: thefts) • Stating there is no caretaker
Sexual Abuse	<ul style="list-style-type: none"> • Difficulty in walking or sitting • Torn, stained, or bloody underclothing • Pain/Itching in genital area • Bruises or bleeding in external genitalia, vaginal, or anal areas • Venereal disease • Pregnancy 	<ul style="list-style-type: none"> • Unwilling to change for gym or participate in PE class • Withdrawal, fantasy, or infantile behavior • Bizarre, sophisticated, or unusual sexual behavior or knowledge • Poor peer relations • Delinquent or runaway • Reporting sexual assault by caretaker
Emotional Maltreatment	<ul style="list-style-type: none"> • Speech disorders • Lagging in physical development • Failure to thrive 	<ul style="list-style-type: none"> • Habit disorders (sucking, rocking, biting, etc.) • Conduct disorders (antisocial, destructive, etc.) • Neurotic traits (sleep disorders, play inhibition) • Psychoneurotic reactions (hysteria, obsession, phobias, compulsion, hypochondria) • Behavior extremes: compliant, passive aggressive, demanding • Overly adaptive behavior: inappropriately adult • Developmental lags (mental, emotional) • Attempted suicide

Source: D.D. Broadhurst, *The Educator's Role in the Prevention of Child Abuse and Neglect* (Washington, DC: National Center on Child Abuse and Neglect, U.S. Department of Health, Education, and Welfare, Pub. No. 79-30172, 1979). Note: The symptoms listed in the above table are from a government document published in 1979. Abuse needs to be diagnosed through trained counselors and/or medical practitioners.

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ENDNOTES

¹ The No Child Left Behind (NCLB) Act of 2001 is an excellent example. NCLB is a federally mandated act, however, each individual state determines WHAT is tested, HOW testing will take place, and HOW to define proficiency. In fact, some states utilize norm-referenced tests that assess students' broad knowledge measuring performance against similar groups, while other states employ criterion-based testing which measures discrete knowledge against standards, such as state standards.

² See Table 1 for a list of legal resources that may assist you finding specific information regarding your state legislation.

³ To help you identify abuse, see Table 2 for Physical and Behavioral Indicators of Child Abuse and Neglect, compiled by the National Center on Child Abuse and Neglect, U.S. Department of Health. Abuse should be properly diagnosed by a medical health professional.

⁴ See <http://www.nea.org/student-program/membership> for more information. At the time of writing, NEA offers liability insurance for student teachers for less than \$25 a year. Other organizations, such as the Texas Classroom Teachers Association, provide complimentary professional liability insurance for Texas student teachers upon joining the organization.



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